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Via ECFS

November 2, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: IB Docket No. 16-155, Notice of Ex Parte Presentation

Dear Ms. Dortch:

On October 31, 2016, the undersigned, together with the following representatives of INCOMPAS members, met with the staff of the Commission's International Bureau regarding the above referenced proceeding: Ivana Kriznic, Compliance and Regulatory Counsel, Orange Business Services; Paula Boyd, Director, Government and Regulatory Affairs, Microsoft; Jim Lamoureux, Senior Attorney, Microsoft; and Yaron Dori, Covington & Burling, outside counsel for Microsoft. The staff of the Commission's International Bureau who participated in this meeting are identified on the cc: line of this submission.

The following day, on November 1, 2016, the undersigned, together with these same representatives of INCOMPAS members, met with each of the following: Holly Sauer, Legal Advisor to Chairman Wheeler; Daudeline Meme, Legal Advisor to Commissioner Clyburn; Johanna Thomas, Legal Advisor to Commissioner Rosenworcel; Erin McGrath, Legal Advisor to Commissioner O'Rielly; and Matthew Berry, Chief of Staff to Commissioner Pai. The following representatives of INCOMPAS members also participated in some of these meetings: Nicholas Alexander, Associate General Counsel, Federal Affairs, Level 3 (participated in the meetings with Ms. Sauer, Ms. Thomas, Ms. McGrath and Mr. Berry); Sheba Chacko, Senior Counsel and Head, Americas Regulation and Global Telecoms Policy, BT (participated in the meeting with Ms. Sauer); and Jennifer Taylor Hodges, Vice President, US Government Affairs, BT (participated in the meeting with Ms. Meme, Ms. McGrath and Mr. Berry).

In each of these meetings, we made the following key points:

First, we explained that Team Telecom's review of qualifying Commission applications should be subject to a firm 90-day deadline, with extensions granted only rarely and in specified circumstances.[1] We noted in this regard that the record demonstrates that a 90-day review

[1] Among other things, the certainty afforded by a firm 90 day deadline would allow undersea cable license applicants in particular to file their applications later in the overall project timeline

provides Team Telecom with sufficient time to undertake an appropriate assessment of foreign ownership or control implications in the vast majority of cases, and that the Commission therefore should permit limited extensions of up to (though not always in each instance) an additional 90 days only in two circumstances: (1) if material information comes to light once the initial 90-day review period has commenced, and, taking into account the nature of that information and the time remaining in the initial 90-day period to review it, Team Telecom does not have sufficient time to evaluate it; or (2) a *force majeure* event, such as a government shutdown, prevents Team Telecom from a reasonable opportunity to complete its review within the initial 90-day period. We explained in this regard that a change would be material if it pertains to specific criteria that Team Telecom must evaluate to assess the law enforcement or national security implications of the foreign ownership or control at issue. We provided two examples of this: a change in the controlling entity of a licensee or applicant, or, in the case of a submarine cable landing license application, a change in the cable's landing site. We noted that a change in corporate name or minority interest in the licensee or applicant typically would not be material, though Team Telecom would retain the ability to conclude otherwise by explaining so in writing and seeking additional review time from the Commission. We also noted that if an applicant or group of applicants is not able to timely respond to a legitimate request for additional information by Team Telecom within the seven-day period proposed, the Commission should pause the 90-day (or other applicable) review period until such time as the information is provided rather than require the applicant or applicants to withdraw their application without prejudice. We explained that the latter approach would create more, not less, work for all parties—the Commission, Team Telecom, and the applicants—which would undermine one of the key goals of this proceeding: to improve the predictability and timeliness of the Team Telecom review process.

Second, we explained that it would be inappropriate for the Commission to require applicants to certify compliance with extra-legal obligations. We provided two examples of this. The first pertained to proposals to require applicants to certify that they will adhere to legal requirements that apply only to a certain class of service providers and not to the applicants specifically, such as requiring non-telecommunications carriers to certify that they will comply with the Communications Assistance Law Enforcement Act (CALEA), a statute that by its terms (and as applied by the Commission) applies only to telecommunications carriers. The second pertained to proposals to require applicants to certify that they will agree to undertake certain actions that are not legally required, such as making communications and records available in a form and location that permits them to be subject to legal process under U.S. law. We noted in this regard that the reply comments filed in this proceeding by the National Telecommunications and Information Administration acknowledge that today there is no such legal requirement,[2] and we noted further that any such certification requirement would contravene established U.S. policy, could lead to reciprocal demands from foreign governments and inappropriately interject

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for an undersea cable—at a point where the applicant faces far less uncertainty with respect to many of the pertinent details concerning the prospective operation of the cable.

[2] *In re: Notice of Proposed Rulemaking on Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership*, IB Docket No. 16-155, Reply Comments of the National Telecommunications and Information Administration, filed September 2, 2016, at 7-8.

the Commission into an area that is the subject of pending litigation, including before the U.S. Court of Appeals for the Second Circuit. We also explained that such a certification requirement would undermine trust in U.S. service providers and global providers that offer services in the U.S., as well as those that rely on affected submarine cable licensees in their provision of cloud services, thereby undermining the ability of U.S. companies to compete around the world.

Third, we explained that any standard questionnaire or application form designed to elicit information that is relevant to Team Telecom's assessment should require only information that is common to the vast majority of Team Telecom assessments; it should not seek every category of information that could potentially be relevant because in the past that information turned out to be relevant for some subset of applicants. We noted that the former approach would facilitate efficiency without preventing Team Telecom from seeking additional information when necessary during the evaluation period, while the latter would burden applicants with requirements that they either could not meet, should not have to meet, or could meet only by devoting considerable resources to meeting them without necessarily producing commensurate benefits for Team Telecom or the Commission. We also raised concerns with any proposal to identify in this rulemaking only the subject matter of appropriate application questions while deferring the development of actual application questions to the Paperwork Reduction Act (PRA) process. We noted that the Commission should permit only those application questions that, in addition to falling within any prescribed category of inquiry, call only for information that is directly relevant to Team Telecom's assessment of foreign ownership or control implications for the vast majority of applicants. We explained that adherence to this relevance standard would be critical to ensuring that irrelevant and unduly burdensome questions, or those targeted at only a small subset of applicants, do not become part of any standard application process.

In our meetings, we also discussed additional issues that we raised in our comments or reply comments in this docket; specifically, that the Commission require Team Telecom to submit requests for additional time or unfavorable recommendations in writing so applicants have a meaningful opportunity to understand, address, and, if appropriate, challenge them; that certain categories of highly confidential data be treated as presumptively confidential; that applicants be permitted to submit certain categories of highly confidential data directly to Team Telecom; that the Commission prescribe—or at a minimum urge adherence to—secure data handling practices for the Team Telecom agencies when handling sensitive applicant data; that an application can be accepted for filing by the Commission where an applicant certifies that any information required to be provided under the Commission's rules either is included in the application of that such information has been or will be furnished directly to Team Telecom; and that applications that lack reportable foreign ownership or where the applicants recently were subject to Team Telecom review without subsequent material change not be subject to the Team Telecom review process.

Pursuant to the Commission's rules, a copy of this letter is being filed in the above-referenced docket. Please contact me if you have any questions.

Respectfully submitted,

/s/Angie Kronenberg

Angie Kronenberg
Chief Advocate & General Counsel

cc: Holly Sauer
Daudeline Meme
Johanna Thomas
Erin McGrath
Matthew Berry

IB Staff
Kate Collins
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